IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 5, 2004 Session

STATE EX REL. RUTH TRIVETT, ET AL. v. CITY OF McMINNVILLE

Appeal from the Circuit Court for Warren County
No. 907, 972, 973 Charles D. Haston, Sr., Judge

No. M2003-02623-COA-R3-CV - Filed January 24, 2005

Landowners in three areas annexed by the City of McMinnville filed three separate *quo warranto* actions contesting annexation pursuant to Tenn. Code Ann. § 6-51-101 et seq. The landowners also petitioned Warren County to contest the proposed annexation pursuant to Tenn. Code Ann. § 6-58-108. The County approved the landowners' petitions and filed three additional actions to contest annexation. The trial court dismissed the county's three actions as time barred because they were filed more than 90 days after passage of the ordinances. The trial court also dismissed the landowners' *quo warranto* actions, filed pursuant to Tenn. Code Ann. § 6-51-103, based upon a finding that two statutory schemes for annexation were mutually exclusive and that the landowners waived their right to file their own actions when they petitioned the county to represent their interests pursuant to Tenn. Code Ann. § 6-58-108. The landowners appeal dismissal of their actions. We find that the two statutory schemes for annexation are not mutually exclusive, the landowners have a right to contest annexation independent from that of the county, and the period of limitations for the landowners to file actions to contest annexation was 90 days. Thus, we vacate the order dismissing the landowners' actions and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Vacated and Remanded

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Amy V. Hollars, Livingston, Tennessee, George A. Burke, Sr., and Richard A. Dorris, McMinnville, Tennessee, for the appellants, Ruth Trivett, Joe T. Boyd, William S. and Kristie B. Rogers, and Dow A. Hayes and Bertha L. Hayes.

Michael D. Galligan and Susan N. Marttala, McMinnville, Tennessee, for the appellee, City of McMinnville.

OPINION

The matters at issue pertain to differences between two inconsistent statutory schemes for annexation and the contest of annexation. The older scheme, which has been on the books since 1955, is Tenn. Code Ann. § 6-51-101 et seq., entitled "Change of Municipal Boundaries." The newer scheme, enacted in 1998, is Tenn. Code Ann. § 6-58-101 et seq., entitled "Comprehensive Growth Plan."[1]

The genesis of this dispute occurred when the City of McMinnville passed three ordinances to annex property in three areas of Warren County, Tennessee: Area Four, Area Five and Area Six. Landowners in each of the annexed areas opposed annexation and petitioned Warren County to contest annexation on their behalf pursuant to Tenn. Code Ann. § 6-58-108. The County Commission timely passed three resolutions, each within 60 days of the passage of the respective ordinances, to contest each of the annexations. While awaiting the county to file its actions, landowners in each of the three annexed areas filed *quo warranto* actions pursuant to Tenn. Code Ann. § 6-51-103. The landowners' actions were filed within 90 days of passage of the respective ordinances. Thereafter, the county filed three actions, in addition to those filed by the landowners; however, the county filed its actions more than 90 days after the passage of the respective annexation ordinances.

The limitations period in Tenn. Code Ann. § 6-58-108(b)(4), the newer statute, requires that the "county *or any other aggrieved owner of property*" must file "within ninety (90) days of final passage of the annexation ordinance" to contest the annexation. (emphasis added). The landowners filed *quo warranto* actions pursuant to Tenn. Code Ann. § 6-51-103, the older statute, within 90 days of passage of the ordinances.

The city filed motions to dismiss the county's and the landowners' complaints. Following a hearing on the motions, the trial court granted the motions. The trial court found that the two statutory schemes provided mutually exclusive means for challenging annexation and that the landowners waived their right to file a contest under the older statute when they petitioned the county to intervene on their behalf pursuant to the newer statute. The trial court also found that the county failed to timely file its actions because they were filed outside the 90-day limitations period prescribed by Tenn. Code Ann. § 6-58-108. Thus, the trial court also dismissed the three actions filed by the county. The order reads as follows:

> With regard to Plaintiffs' complaints in case numbers 907, 972, and 973, (which lawsuits were filed pursuant to Tenn. Code Ann. § 6-51-101 et seq. within ninety (90) days of the final passage of the annexation ordinances the lawsuits purport to contest), this Court finds that, in light of the current statutory framework of annexation law in Tennessee, those cases must also be dismissed. This Court finds

[1]The similarity of the numbering of the two statutes has created some confusion. Thus, care should be taken to recognize that the older statutory scheme is in Chapter 51 while the newer statutory scheme is in Chapter 58.

> that because of the statutory framework of the two existing annexation ordinances, namely Tenn. Code Ann. § 6-51-101 et seq. and § 6-58-101 et seq., lawsuits filed under these statutes are mutually exclusive. . . . In construing the legislation, this Court finds that when a majority of the property owners in Areas 4, 5, and 6 petitioned Warren County to represent their interests in an annexation lawsuit, they chose to proceed according to Tenn. Code Ann. § 6-58-101 et seq. At that point, they waived their right to file a lawsuit pursuant to Tenn. Code Ann. § 6-51-103 et seq. Had the Warren County Commission voted not to permit the county to contest the annexation ordinances, then the right to proceed with a lawsuit pursuant to § 6-51-103 et seq. would have been restored to the property owners according to Tenn. Code Ann. § 6-58-108(b)(5). However, when the Warren County Commission voted to permit the county to contest the annexation ordinances in Warren County Resolutions 11, 4, and 5, then it was the County's obligation and right to file those lawsuits within ninety (90) days of the final passage of the annexation ordinances. Tenn. Code Ann. § 6-58-108 (b)(3) states in part, "if the county legislative body adopts a resolution to contest the annexation, the county **shall** file suit to contest the annexation pursuant to this section within ninety (90) days of the final passage of the annexation ordinance." Because the county did not file suit to contest the annexation pursuant to Tenn. Code Ann. § 6-58-101(b)(3) within ninety (90) days of final passage of the annexation ordinances at issue, those ordinances became effective ninety (90) days after final passage. The complaints filed in case numbers 907, 972, and 973 must be dismissed. (emphasis in original).

Only the landowners appeal. They raise two issues.[2]

1. Statutory Interpretation - The landowners argue that the trial court erred by ruling that the statutes are mutually exclusive. They assert that nothing in the statutes provides that a landowner waives his or her right to contest annexation under Tenn. Code Ann. § 6-51-103 if he or she joins with other landowners to petition the county to represent their interests under Tenn. Code Ann. § 6-58-108. The landowners further argue that nothing in the newer statute provides that failure of the county to file the *quo warranto* suit within the time period under the new statute destroys the landowners' right to contest annexation under the older statute.

2. Standing - The landowners argue that the trial court erred by finding that the landowners lost their standing to maintain their *quo warranto* actions once they petitioned the county pursuant to the newer statute to represent their interests. They insist the ruling was erroneous because neither statute strips them of their right to maintain such an action merely because they requested the county to represent their interests.

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[2]The landowners raised the additional issue of Election of Remedies as their third issue. The City of McMinnville states that it does not rely on that issue on appeal and does not brief the issue. Thus, that issue is moot and is not addressed.

The city argues that the two statutes provide mutually exclusive means for challenging annexation. The city contends that the landowners may either proceed under Tenn. Code Ann. § 6-51-101 et seq. individually or they may petition the county to represent them under Tenn. Code Ann. § 6-58-101, et seq., but they cannot do both. The city asserts that the landowners are erroneously attempting to blend elements of two separate statutory schemes to obtain a satisfactory result. Specifically, the city contends that Tenn. Code Ann. § 6-58-108, which has a 90-day limit within which to file an action, does not enlarge the period in which the landowner may file an action under Tenn. Code Ann. § 6-51-101 et seq., which the courts have held to be 30 days. The city contends that the newer statute was enacted to give counties, and only counties, the right to challenge annexation. The city further contends that the two statutory schemes have distinct provisions that trigger the running of the respective periods within which a county, under the newer scheme, and landowners, under the older scheme, may file their respective *quo warranto* actions. The city further contends that the landowners waived their right and thus standing to proceed when they petitioned the county to intervene on their behalf.

The pertinent facts relative to each of the three cases are as follows:

Area Four: On March 26, 2001,[3] the city passed ordinance No. 1376 to annex 379 acres in an area identified as Area Four. On April 4 (nine days after passage of the ordinance) a majority of landowners from the area petitioned Warren County to represent their interests to contest annexation. The county passed Resolution No. 11 on April 23 (twenty-eight days after passage of the ordinance) authorizing the county attorney to file a *quo warranto* proceeding against the city contesting annexation of Area Four. On June 22 (eighty-eight days after passage of the Ordinance No. 1376) landowners from Area Four filed a *quo warranto* action pursuant to Tenn. Code Ann. § 6-51-101 et seq., contesting the annexation ordinance.[4] The county filed its *quo warranto* action and motion to intervene in the landowners' action more than 90 days after passage of the ordinance.

Area Five: On May 21 the city passed ordinance No. 1380 to annex an area identified as Area Five. On June 22 (thirty-two days after passage of the ordinance) a majority of landowners from the area petitioned Warren County to represent their interests to contest annexation. The county passed Resolution No. 4 on June 25 (thirty-five days after passage of the ordinance) authorizing the county attorney to file a *quo warranto* proceeding against the city contesting annexation of Area Five. On August 17 (eighty-eight days after passage of the Ordinance No. 1380) landowners from Area Five filed a *quo warranto* action pursuant to Tenn. Code Ann. § 6-51-101 et seq., contesting the annexation ordinance.[5] The county filed its *quo warranto* action and motion to intervene in the landowners' action more than 90 days after passage of the ordinance.

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[3] All of the events occurred in 2001; therefore, for brevity we have omitted the year from the following dates.

[4] This action is Warren County Circuit Court Case No. 907, State of Tennessee, ex rel., William S. Rogers, et al. v. City of McMinnville.

[5] This action is Warren County Circuit Court Case No. 972, State of Tennessee, ex rel., Joe T. Boyd, Trustee, et al. v. City of McMinnville.

Area Six: On May 21 the city passed ordinance No. 1381 to annex an area identified as Area Six. On June 13 (twenty-three days after passage of the ordinance) a majority of landowners from the area petitioned Warren County to represent their interests to contest annexation. An amended petition was filed by the landowners on June 25. The county passed Resolution No. 5 on June 25 (thirty-five days after passage of the ordinance) authorizing the county attorney to file a *quo warranto* proceeding against the city contesting annexation of Area Six. On August 17 (eighty-eight days after passage of the Ordinance No. 1381) landowners from Area Five filed a *quo warranto* action pursuant to Tenn. Code Ann. § 6-51-101 et seq., contesting the annexation ordinance.[6] The county filed its *quo warranto* action and motion to intervene in the landowners' action more than 90 days after passage of the ordinance.

An additional pertinent fact is that these proceedings arose after May 19, 1998, and before the approval of a "growth plan."[7] This is significant because a different procedure would apply had the county adopted a growth plan prior to these proceedings. *See* Tenn. Code Ann. §§ 6-58-104 to 107 and § 6-58-108(a)(1).

Standard of Review

The matters at issue hinge on the interpretation of two statutes. Responsibility for determining what a statute means rests with the courts. *Roseman v. Roseman*, 890 S.W.2d 27, 29 (Tenn. 1994). The trial court has stated its interpretation of the statutes as they pertain to the facts of this case. Now, we must review the trial court's interpretation of a statute or application of a statute to a particular set of facts *de novo* without a presumption of correctness. *Hill v. City of Germantown*, 31 S.W.3d 234, 237 (Tenn. 2000); *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000).

It is our responsibility to ascertain and give the fullest possible effect to the General Assembly's purpose in enacting the statute as reflected in the statute's language, *Stewart v. State*, 33 S.W.3d 785, 790-91 (Tenn. 2000), and avoid construction that unduly expands or restricts the statute's application. *Watt v. Lumbermens Mutual Casualty Ins. Co.*, 62 S.W.3d 123, 127-28 (Tenn. 2001). Our goal is to construe a statute in a way that avoids conflict and facilitates the harmonious operation of the law. *Frazier v. East Tenn. Baptist Hosp.*, 55 S.W.3d 925, 928 (Tenn. 2001). Our construction of a statute is more likely to conform with the General Assembly's purpose by presuming that the General Assembly chose its words purposely and deliberately, *Tidwell v. Servomation-Willoughby Co.*, 483 S.W.2d 98, 100 (Tenn. 1972), and that the words chosen convey the meaning the General Assembly intended them to convey. *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 83 (Tenn. 2001). Thus, our search for a statute's purpose begins with the words of the statute itself. *Blankenship v. Estate of Bain*, 5 S.W.3d 647, 651 (Tenn. 1999).

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[6] This action is Warren County Circuit Court Case No. 973, State of Tennessee, ex rel., Ruth Trivett, et al. v. City of McMinnville.

[7] The planning advisory committee for Warren County approved a growth plan on June 21, 2002. Since it was adopted after these proceedings arose, it has no application to these proceedings.

Dueling Statutes

The older statutory scheme, enacted in 1955, is entitled "Change of Municipal Boundaries." Tenn. Code Ann. § 6-51-101 et seq. It provides a mechanism for a municipality, when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative to extend its corporate limits by annexation of such territory adjoining its existing boundaries. Tenn. Code Ann. § 6-51-102(a)(1). It further provides the procedure by which an aggrieved owner of property which borders or lies within territory which is the subject of an annexation ordinance may file suit to contest the validity of the annexation. Tenn. Code Ann. § 6-51-103(a)(1)(A).

The procedure for judicial review under the older statute is that an aggrieved owner of property may file a suit in the nature of a *quo warranto* proceeding "prior to the operative date" of the ordinance. Tenn. Code Ann. § 6-51-103(a)(1)(A). The operative date is controlled by Tenn. Code Ann. § 6-51-102(a)(1). It reads, "the ordinance shall not become operative until thirty (30) days after final passage" of the ordinance. Tenn. Code Ann. § 6-51-102(a)(1).

The newer statutory scheme, enacted in 1988, is entitled "Comprehensive Growth Plan." Tenn. Code Ann. § 6-58-101 et seq. The stated purpose of this statutory scheme is to establish a comprehensive growth policy that:

(1) Eliminates annexation or incorporation out of fear;
(2) Establishes incentives to annex or incorporate where appropriate;
(3) More closely matches the timing of development and the provision of public services;
(4) Stabilizes each county's education funding base and establishes an incentive for each county legislative body to be more interested in education matters; and
(5) Minimizes urban sprawl.

Tenn. Code Ann. § 6-58-102. The newer statute specifies a procedure for judicial review of proposed growth plans that is significantly different from that in the older statute. The more significant differences pertain to the parties that may bring an action, which party has the burden of proof, whether the parties are entitled to a jury trial or a bench trial, and the time period before which an annexation ordinance becomes operative.

The newer statutory scheme further provides that "a municipality may annex territory by ordinance as approved by § 6-51-102 [the older statutory scheme] *unless the county legislative body adopts a resolution disapproving such annexation within sixty (60) days of the final passage of the annexation ordinance*." (emphasis added) Tenn. Code Ann. § 6-58-108(a)(1). The statute goes on to provide that if the county disapproves the annexation by "adopting a resolution within the sixty-day period, *then the ordinance shall not become operative until ninety (90) days after final passage subject to the proceedings under this section*." (emphasis added) Tenn. Code Ann. § 6-58-108(a)(2).

Dueling "Operative" Dates

The period before an annexation ordinance may become "operative" differs under the two statutory schemes. Moreover, the period before an annexation ordinance may become operative under the newer statutory scheme may, or may not, depend on whether landowners petition the county to contest the annexation ordinance.

The older scheme is less confusing than its younger sibling. It provides that an aggrieved owner of property may file a *quo warranto* action "prior to the operative date" of the annexation ordinance, Tenn. Code Ann. § 6-51-103(a)(1)(A), and the ordinance shall not become operative "until thirty (30) days after final passage." Tenn. Code Ann. § 6-51-102. It does not, however, specify a period within which to commence an action to contest annexation. As a result the courts were called upon to determine the period within which an aggrieved owner of property could contest an annexation ordinance. *See Bastnagel v. City of Memphis*, 457 S.W.2d 532 (Tenn. 1970). To make such a determination the court found it necessary to read two statutory provisions in conjunction to determine the limitations period applicable to contests filed pursuant to Tenn. Code Ann. § 6-51-101 et seq. *Id*. at 535. The two provisions were Tenn. Code Ann. § 6-51-103 (formerly Tenn. Code Ann. § 6-310), which provided that the suit must be filed prior to the "operative date," and Tenn. Code Ann. § 6-51-102 (formerly Tenn. Code Ann. § 6-309), which provided that no annexation ordinance shall be operative until thirty days after final passage. The court concluded that the two provisions had the effect of giving aggrieved landowners thirty (30) days after final passage of the ordinance to contest its validity. *Id*. at 535.

The newer statutory scheme establishes different "operative" dates which are dependent on a number of conditions precedent. Tenn. Code Ann. § 6-58-108(a)(1) provides that a municipality may annex territory by ordinance *unless* the county legislative body adopts a resolution disapproving such annexation within sixty (60) days of the final passage of the ordinance. Thus, the operative date of such an ordinance cannot be earlier than sixty (60) days following final passage of the ordinance. The next subsection, § 6-58-108(a)(2), extends the earliest operative date from sixty (60) to ninety (90) days in the event the county disapproves annexation. It provides, "If the county disapproves the annexation by adopting a resolution within the sixty-day period, then the ordinance shall *not* become operative until ninety (90) days after final passage subject to the proceedings under this section." (emphasis added) Tenn. Code Ann. § 6-58-108(a)(2). Therefore, if the condition precedent is met, the annexation ordinance cannot become operative earlier than 90 days following final passage of the ordinance. A third subsection, § 6-58-108(b)(4), provides, if the county or "*any other aggrieved owner of property* does *not* contest the ordinance under § 6-51-103 [the older statute] within ninety (90) days of final passage of the annexation ordinance, the ordinance shall become operative ninety (90) days after final passage thereof."

Reading the foregoing statutes in conjunction, in a manner as our Supreme Court did in *Bastnagel*, there is only one conclusion that can be reached and that is the ordinances cannot – indeed "shall not" – become operative earlier than ninety (90) days after final passage.[8]

Since our plaintiffs filed their *quo warranto* actions less than 90 days after final passage of the ordinances, it would appear the foregoing conclusion resolves the issues presented; however, the city argues otherwise. It maintains that the two statutes must be viewed separately, that the rights of a county to contest annexation under the newer statute are different from the rights of individual landowners under the older statute. It further argues that the two statutes cannot be "blended" to delay the operative date of the ordinances. Stated another way, the city argues that only the county is afforded the 90-day window before the ordinances become operative and that individual landowners are subject to the 30-day window. Thus, it appears the city is arguing that annexation ordinances become operative 30 days after passage against all individual landowners, regardless of what the county does or does not do; however, the same ordinances are not operative against the county for 90 days if the county timely adopts a resolution within 60 days and timely files its action within 90 days, but if it fails to do both in a timely fashion then the ordinances were also operative (*arguendo* retroactively) against the county 30 days after passage.

Warren County timely passed three resolutions disapproving annexation, thus signaling its intent to file its own actions to contest annexation. It thereafter filed all three actions but untimely. The trial court properly dismissed the county's complaints. The city maintains that the county's failure to timely file its actions resulted in the annexation ordinances being operative 30 days after final passage. It then asserts that if the ordinances were operative they were no longer subject to contest.

If the ordinances had become operative after 30 days, then the city's argument that the ordinance were no longer subject to contest would be correct. However, there are several fallacies with this argument. One, Tenn. Code Ann. § 6-58-108(a)(1) provides that a municipality may annex territory by ordinance *unless* the county legislative body adopts a resolution disapproving such annexation within sixty (60) days of the final passage of the ordinance. The county timely passed such resolutions. Two, Tenn. Code Ann. § 6-58-108(a)(2) provides that *if* the county disapproves the annexation by adopting a resolution within the sixty-day period, the ordinance shall *not* become operative until ninety (90) days after final passage. The county timely passed such resolutions; thus, the ordinances at issue could not have become operative until the ninetieth day at the earliest. Three, Tenn. Code Ann. § 6-58-108(b)(4) provides that the annexation ordinance will be operative 90 days

[8] What is not as clear is whether such a petition by the property owner to the county is essential to increase the period of limitation from 30 days to 90 days. Though not entirely consistent with the foregoing, the newer statute also provides that, "If the county or *any other aggrieved owner of property* does not contest the annexation ordinance under § 6-51-103 [the older statute] within ninety (90) days of final passage of the annexation ordinance, the ordinance shall *become operative ninety (90) days after final passage* thereof." Tenn. Code Ann. § 6-58-108(b)(4). To bring an action under § 6-51-103 [the older statute] does not require petitioning the county to intervene. While these provisions are somewhat inconsistent and indeed confusing, it is not necessary that we wrestle with that uncertainty to resolve the dispute presented by the parties.

after passage *if* the county or *any other aggrieved owner of property* does *not* contest the ordinance under § 6-51-103 [the older statute]. Our plaintiffs qualify as other aggrieved owners of property and they filed *quo warranto* actions to contest the ordinances under § 6-51-103, just as the statute contemplates.

There is one more fallacy in the city's argument. It is the period that can be described as the "limbo period" – the period in which the operative date of the ordinances would be in limbo – being the 31st day through the 89th day following final passage of each ordinance. The county adopted resolutions disapproving annexation within 60 days of final passage of the ordinance. Thus, pursuant to Tenn. Code Ann. § 6-58-108(a)(1) and (2), the ordinances could not become operative prior to 90 days following final passage. Nevertheless, the city argues that the ordinances were operative on the 30th day following final passage since the county failed to file its actions within the following 59 days. But the city had no way of knowing that the county would fail to timely file its contests until the 90th day. This begs the question, "What was the status of the ordinances and what was the status of Areas Four, Five and Six during those 59 days, the period from the 31st day up to the 90th day?" The answer is obvious, the ordinances were <u>not</u> operative. Tenn. Code Ann. § 6-58-108(a)(1) and (2) provide that the ordinances "shall not become operative until ninety (90) days after final passage" if the county timely adopts resolutions to contest the ordinances, which it did. Tenn. Code Ann. § 6-58-108(b)(3), upon which the city relies, does not have the magical effect of making time stand still while the world waited to see if the county timely filed its action prior to the expiration of the 90th day, or the effect of the subsequent entry of an order *nunc pro tunc*.

The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn.1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991). Where the language contained within the four corners of a statute is plain, clear, and unambiguous and the enactment is within legislative competency, "the duty of the courts is simple and obvious, namely, to say *sic lex scripta*, and obey it." *Carson Creek Vacation Resorts, Inc. v. State of Tennessee, Dept. of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993) (quoting *Miller v. Childress*, 21 Tenn. (2 Hum.) 319, 321-22 (1841)).

Reading Tenn. Code Ann. § 6-58-108(a)(2) in conjunction with Tenn. Code Ann. § 6-58-108(b)(4), which references Tenn. Code Ann. § 6-51-103, we can only conclude that an ordinance does not become operative prior to the running of the 90 day period if *an aggrieved owner of property* (such as our plaintiffs) filed an action to contest the annexation ordinance under § 6-51-103 [the older statute] within ninety (90) days of final passage, Tenn. Code Ann. § 6-58-108(b)(4), or the county passed a resolution to contest the annexation ordinance within sixty days of its passage, Tenn. Code Ann. § 6-58-108(a)(2). Both conditions precedent exist in the case at bar. Our plaintiffs filed the actions at issue under Tenn. Code Ann. § 6-51-103 [the older statute] within ninety (90) days and, upon petition of our plaintiffs, the county passed the requisite resolution prior to the 60th day. Thus, the ordinances at issue did not become operative prior to our plaintiffs filing their actions

pursuant to Tenn. Code Ann. § 6-51-103, inconsistencies in the two statutory schemes notwithstanding.

We recognize that Tenn. Code Ann. § 6-51-102, which expressly states that an annexation ordinance "shall not become operative until thirty (30) days after final passage," is still on the books. We further recognize that, standing alone, it would have rendered the ordinances at issue operative and thus incontestable prior to our plaintiffs actions being filed. Nevertheless, Tenn. Code Ann. § 6-51-103 no longer stands alone and, at least in some circumstances, has been supplanted by the enactment of Tenn. Code Ann. § 6-58-108(a)(1) and (2). Those circumstances include when there is a possibility the county may adopt a resolution to disapprove annexation pursuant to Tenn. Code Ann. §§ 6-58-108(a)(1). This is due to the fact that a county has sixty (60) days within which to do so and the ordinance(s) may not become operative prior to the 60th day. Moreover, if the county adopts a resolution disapproving annexation, the ordinance may not become operative earlier than ninety (90) days after final passage of the ordinance(s). Tenn. Code Ann. §§ 6-58-108(a)(2). Thus, Tenn. Code Ann. § 6-51-102 has no application to the case at bar based on the facts presented.

The landowners filed their actions to contest the annexation ordinances under Tenn. Code Ann. § 6-51-103 within ninety (90) days of final passage of the annexation ordinances. By filing their individual actions within ninety (90) days of the city's final passage the landowners' timely filed their actions. Thus, our plaintiffs are entitled to pursue their contest of the annexation ordinance under Tenn. Code Ann. § 6-51-103, the older statute, as is contemplated in Tenn. Code Ann. § 6-58-108(b)(4).[9]

Standing

The city argues that the landowners lost their standing to pursue this action when the landowners petitioned the county to adopt resolutions to disapprove the annexations. The city primarily relies on Tenn. Code Ann. § 6-58-108(b) to make this argument; however, the statute does not expressly preclude a landowner from pursuing a *quo warranto* action under the older scheme, pursuant to Tenn. Code Ann. § 6-51-101 et seq., when a county adopts resolutions to disapprove annexation. Though Tenn. Code Ann. § 6-58-108 provides that the county shall be deemed "an aggrieved owner of property" and gives the county standing to contest an annexation ordinance, the statute does not state that the county shall become the *only* aggrieved owner of property or that the landowners have waived their right or have lost standing to file a *quo warranto* action to contest the annexation under Tenn. Code Ann. § 6-51-101 et seq.

The city's argument is based on an erroneous interpretation of Tenn. Code Ann. 6-58-108(b)(1). The statute reads, if "a majority of the property owners" petition the county to "represent

[9]The statute provides that the ordinance will become operative if any "aggrieved owner of property does not contest the annexation ordinance under § 6-51-103 within ninety (90) days." Tenn. Code Ann. § 6-58-108(b)(4). Thus, the converse of the provision is that the ordinance will not become operative if any aggrieved owner of property contests the annexation ordinance under § 6-51-103 within ninety (90) days and that the "aggrieved owner of property" may pursue the contest under § 6-51-103, which is the older statute.

their interests" the county shall be deemed "an aggrieved owner of property giving the county standing to contest" the annexation ordinance. The city interprets the statute as stripping the landowners of standing. By providing that the county shall be deemed *an* aggrieved owner of property, as distinguished from *the* aggrieved owner of property, the legislature afforded the county the right to contest the annexation ordinance. Of greater significance is the fact that there is nothing in the new statutory scheme that strips the landowners of their individual right to contest annexation pursuant to Tenn. Code Ann. § 6-51-101 et seq.

The city is correct in its observation that two concurrent *quo warranto* actions, one under Tenn. Code Ann. § 6-51-101 et seq. and one under Tenn. Code Ann. § 6-58-101 et seq., could not be consolidated for trial and that separate trials could produce conflicting judgments. This is due to the fact that under the older statute the contestant is entitled to a jury trial while there is no entitlement to a jury trial under the newer statute. Moreover, the burden of proof is substantially different. Under the older statute the burden is on the city. Under the newer statute the burden of proof is on the contestant. Though problematic, these differences do not mutually exclude two separate and independent challenges to the annexation ordinance at the same time, one by individual landowners and the other by the county.[10]

In Conclusion

We therefore hold that the individual landowners retained the right and have standing to maintain *quo warranto* actions to contest the proposed annexation in Areas Four, Five and Six. As a consequence, we vacate the judgment of the trial court and remand all three *quo warranto* actions to the trial court for further proceedings consistent with this opinion. Costs of appeal are assessed against the City of McMinnville.

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FRANK G. CLEMENT, JR., JUDGE

[10]We can easily envision numerous problems that may result from the dual proceedings, not the least of which is inconsistent judgments, but such issues are not before the court because only the individual landowners actions survive.